



Nebraska Department of
REVENUE

NESCPA

Case Studies

Fall 2012

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This PowerPoint is being used for training purposes in conjunction with the oral presentation given by Department education staff to the NESCPA in the Fall of 2012.

*It is not intended to be a stand-alone document.
It is not an information guide, nor does it carry regulatory or statutory authority.*

Nebraska tax statutes, regulations, information guides, and other resources are available at www.revenue.ne.gov.

All entities referred to in this presentation are fictitious. Any resemblance to real persons (living or dead) or businesses (past or current) is purely coincidental.

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Case Study Issues

<u>Business Taxes</u>	<u>Income Tax</u>
○ Physician or Dentist's Office	○ Form 4797N
○ Health and Fitness Club	○ Underreported Income
○ Admissions	○ Residency Status
○ Bar and Restaurant	○ Apportionment
○ Building Cleaning and Restoration	○ Questionable Deductions
○ Construction Contractor	<u>If there's time...</u>
○ HVAC Contractor	○ Food and Food Ingredients
○ Nonresident Individual Performing Services in Nebraska	

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Business Taxes

- ✓ Physician or Dental Office
- ✓ Health and Fitness Club
- ✓ Admissions
- ✓ Bar and Restaurant
- ✓ Building Cleaning and Restoration
- ✓ Construction Contractor
- ✓ HVAC Contractor
- ✓ Nonresident Individual Performing Services in Nebraska

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Physician or Dental Office

➤ Business Background

- Typically, a general practice office providing professional services
- Usually owned by the practitioners

➤ Typical Purchases

- Equipment
 - Most equipment is specialized
 - Only a few companies make and/or sell it
- Prosthetic devices
 - Most companies that sell these also sell other consumable supplies
- Office equipment and supplies

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Physician or Dental Office (continued)

➤ Typical Audit Findings

Use Tax

- Most companies that sell prosthetic devices are licensed in Nebraska and have a good understanding of whether or not the items they sell are subject to sales tax.
- Use tax is due on untaxed purchases of medical and office supplies.

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Physician or Dental Office (continued)

➤ Typical Audit Findings

Sales Tax

- Selling tangible personal property may be subject to sales tax.
- Selling medical records.

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Physician or Dental Office (continued)

➤ Audit Results

Use Tax

- Use tax is assessed if the taxpayer did not retain records.
 - No purchase invoices
 - Credit card statement showing no tax and no back-up detail for the credit card statement

Interest and Penalty

- Calculated on all assessments.

Taxpayer Education

- Many taxpayers believe that their profession allows them to make **ALL** of their purchases exempt from sales tax. **This is not always true.**

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Health and Fitness Club

➤ **Business Background**

- Typically, a franchise with multiple locations

➤ **Typical Sales**

- Generally require an initial payment collected on-site
- Subsequent monthly EFT or credit card payments are collected by the franchisor.
 - The franchisor provides paid membership reports to the franchisee.
- Instructional fitness classes
- Clothing and equipment sales
- Health supplements
- Vending machine sales

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Health and Fitness Club (continued)

➤ **Typical Purchases**

- Required to purchase exercise equipment from specific vendors
- Security systems
- Repair parts
- Advertising

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Health and Fitness Club (continued)

➤ **Typical Audit Findings**

➤ **Use Tax**

Poor record keeping

- Lack of purchase invoices on file
- Retained credit card statements with no back-up documents showing sales tax was paid

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Health and Fitness Club (continued)

➤ **Typical Audit Findings**

➤ **Sales Tax**

- Collected vs. reported discrepancies on sales tax caused by personnel incorrectly calculating sales tax from reports provided by franchisor/permit holder

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Health and Fitness Club (continued)

➤ **Audit Results**

Use Tax

- ✓ Expense and asset accounts are reviewed and use tax is assessed on items without supporting invoices.
- ✓ Use tax assessed on all equipment purchases where invoice shows no sales tax (including delivery charges).
- ✓ Use tax is assessed on credit card statements with no back-up documents showing that sales tax was paid.

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Health and Fitness Club (continued)

➤ **Audit Results**

Sales Tax

- ✓ Sales tax calculated on admissions based on reports from franchisor, as well as initial payments from new members. Compared to Forms 10 on file and the difference is assessed.
- ✓ Sales tax is assessed on supplement sales.
- ✓ Sales tax is assessed on vending machine sales.

Interest and Penalty

- ✓ Calculated on all assessments

Education

- ✓ Education on sales and use tax responsibilities

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Legislative Changes on Admissions

➤ **Sales and Use Tax Exemption for Youth Sports** *(LB 727, Operative July 1, 2012)*

- Admissions and fees charged to participate in youth sports events, leagues, or competitive educational activities are exempt from sales and use taxes.
- Youth sports events, leagues, or competitive educational activities are limited to participants who are less than 19 years old.
- Memberships remain exempt from sales and use taxes.

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Legislative Changes on Admissions (continued)

➤ **Sales and Use Tax Exemption for Statewide Sports Events** *(LB 727, Operative October 1, 2012)*

- Admissions and fees charged to participate in any activity offered by a nonprofit organization that conducts statewide sport events with multiple sports for both adults and youth are exempt from sales and use taxes.

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Legislative Changes on Admissions (continued)

- **Sales and Use Tax Exemption for Youth Development Groups**
(LB 727, Operative October, 1, 2012)
 - Admissions and fees charged to participate in any activity offered by a nonprofit organization that is:
 - affiliated with a national organization;
 - primarily dedicated to youth development and healthy living; and
 - which offers sports instruction and sports leagues or sports events in multiple sports;...are exempt from sales and use tax.

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Bar and Restaurant

- **Business Background**
 - Typically an industry with high employee turnover
 - Large amount of cash sales
- **Typical Sales**
 - Alcoholic beverages
 - Prepared food
 - Chips and packaged snacks
 - Entertainment
 - Admissions
 - Pool, darts, electronic video games
 - Keno

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Bar and Restaurant (continued)

- **Typical Purchases**
 - Alcoholic beverages, soda, food & snack items
 - Tables and chairs, coolers, and refrigeration equipment
 - Plates, silverware, cooking utensils
 - Supplies and decorations

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Bar and Restaurant (continued)

- **Typical Audit Findings**
 - Poor record keeping
 - Lack of purchase invoices on file
 - Lack of daily sales records
 - Federal income tax returns don't match sales tax return figures
 - MAD tax decals not on gaming machines
 - No income tax withholding being reported for employees
 - Informants state business has regular employees
 - No records for employment

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Bar and Restaurant (continued)

➤ **Audit Results**

Sales Tax

- ✓ Sales tax calculated based on purchases of alcoholic beverages and soda
 - ❖ Invoices from alcohol wholesalers
 - ❖ Industry standard cost of goods for this type of business
 - ❖ In the absence of records, the Department uses best available information to develop the assessment.

Permit Revocation

- ✓ Lack of records can lead to revocation of a sales tax permit.

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Bar and Restaurant (continued)

➤ **Audit Results**

Use Tax

- ✓ Expense and asset accounts are reviewed and use tax is assessed on items with no supporting invoices.
- ✓ Use tax is assessed on all equipment purchases where invoices show no sales tax.
- ✓ Use tax is assessed on credit card statements with no back-up documents showing tax was paid.

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Bar and Restaurant (continued)

➤ **Audit Results**

Withholding

- ✓ A projection was made for withholding based on an estimate of full-time workers and state mandatory wage levels.

Other

All unreported sales not included in gross income:

- ✓ Corporate income tax returns are recalculated and the tax is assessed.
- ✓ Flow-through entity individual income tax returns are recalculated and the tax is assessed.
- ✓ Charitable Gaming looks into MAD devices.

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Building Cleaning and Restoration

➤ **Business Background**

- A building cleaning/restoration business generally falls under both the building cleaning regulations and also the contractor regulations.

➤ **Typical Sales**

- Restoration of real property that involves contractor labor
- Cleaning of buildings that may or may not be in conjunction with contractor labor
- Equipment rental

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Building Cleaning & Restoration (continued)

➤ Typical Purchases

- Cleaning supplies
- Office supplies
- Software
- Tools and equipment

➤ Typical Audit Findings

- Poor record keeping
 - Lack of purchase invoices on file
 - Industry standard software doesn't separate portions of work as building cleaning and contractor labor. It also calculates overhead and profit amounts without specific allocations.

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Building Cleaning & Restoration (continued)

➤ Audit Results

Sales Tax

- ✓ Each sales invoice reviewed and sales tax calculated on all charges for building cleaning services

Use Tax

- ✓ Expense and asset accounts reviewed and use tax assessed on items with no supporting invoices
- ✓ Use tax assessed on all equipment purchases where invoice showed no sales tax
- ✓ Use tax assessed on credit card statements with no back-up documents showing tax was paid

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Building Cleaning & Restoration (continued)

➤ Audit Results

Education

- ✓ Education on sales and use tax responsibilities.
- ✓ General sales tax and Contractor presentations.
- ✓ Contractor FAQs.

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Construction Contractors

➤ Business Background

- Construction contractors annex building materials to real estate or repair annexed property.
 - May work for taxable or exempt entities
 - Often hire subcontractors
- May make retail sales.
- May perform other services that are taxable or nontaxable.
- Register on the Department of Labor's Contractor Database.

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Construction Contractors (continued)

➤ **Typical Audit Findings**

Sales Tax

- No option selected, or contractor is operating in a different way than what was selected.
- Option 2 or 3 contractor accepts Form 13 for agricultural or manufacturing jobs
- Contractor does not separate sales of tangible personal property
 - Software or sales of nontaxable services not separated from building materials on invoices
- Form 17 not in place BEFORE project starts

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Construction Contractors (continued)

➤ **Typical Audit Findings**

Use Tax

- Poor record keeping
 - No purchase invoices
 - Credit card statement showing no tax and no back-up detail for the credit card statements
- Most Option 2 and 3 contractors do not report use tax on tools and supplies or on repair/replacement parts.

More...

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Construction Contractors (continued)

➤ **Typical Audit Findings**

Use Tax (continued)

- Option 2 or 3 contractor mistakenly believes he/she can purchase MME exempt by using a Form 13 or Form 17 issued by the manufacturer
- Contractor believes he/she qualifies for the MME exemption on their equipment because they fabricate their building materials.

Withholding

- Prime contractors hire subcontractors who are not on the Department of Labor's Contractor Database.

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Construction Contractors (continued)

➤ **Typical Audit Findings**

Sales Tax

- Failure to select an Option makes the contractor an Option 1 for audit purposes. Each sales invoice is reviewed and sales tax is calculated on all charges for building materials.
- An Option 2 or 3 contractor must pay the sales or use tax on building materials and fixtures. If he/she took a Form 13 and purchased them exempt, he/she was assessed sales tax on those purchases.

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Construction Contractors (continued)

➤ **Audit Results**

Sales Tax

- ✓ Commingled charges, if a split could not be determined, resulted in an assessment

Use Tax

- ✓ Expense and asset accounts reviewed and use tax assessed on items with no supporting invoices
- ✓ Use tax assessed on all equipment purchases where invoices show no sales tax was paid
- ✓ Use tax assessed on credit card statements with no back-up documents showing sales tax was paid
- ✓ When it pertained, business analyzed to see if manufacturing exemption applied

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Construction Contractors (continued)

➤ **Audit Results**

Withholding

- ✓ Any prime contractor who did not withhold on subcontractors who are not on the Department of Labor's Contractor Database were assessed 5% withholding and penalty and interest

Education

- ✓ Education on sales and use tax responsibilities
- ✓ General sales tax and Contractor presentations
- ✓ Contractor FAQs

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HVAC Contractor

➤ **Business Background**

- Typically, a contractor who specializes in heating, ventilation, and A/C units (fixtures)
- Installs heating, A/C, and ventilation units
- Repairs heating and A/C units
- Sells repair parts and duct cleaning services

➤ **Typical Sales**

- Retail and wholesale replacement parts
- Building cleaning services
- Contractor projects on real property

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HVAC Contractor (continued)

➤ **Typical Purchases**

- Parts for resale
- Fixtures and parts to be annexed to real property
- Tools and supplies

➤ **Typical Audit Findings**

Use Tax

- Option 2 or 3 contractors do not report use tax on tools and supplies
- Option 2 or 3 contractors do not report use tax on repair/replacement parts for annexed building materials or fixtures

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HVAC Contractor (continued)

➤ **Typical Audit Findings**

Sales Tax

- Issues with contractors accepting Forms 13 or 17 for building cleaning.
- Issues with contractors having Forms 13 and 17 for each construction project.

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HVAC Contractor (continued)

➤ **Audit Results**

Use Tax

- Use tax assessed because taxpayer did not retain records
 - No purchase invoices
 - Credit card statement showing no tax and no back-up detail for the credit card statements
- Use tax assessed because taxpayer did not report it

More...

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HVAC Contractor (continued)

➤ **Audit Results** (continued)

Sales Tax

- Sales tax assessed on retail sales where documentation could not be obtained for sales tax exempt sales
 - Taxpayer allowed to get Form 13
- Sales tax assessment on building materials used on projects
 - No Form 17 on file for exempt projects
 - Form 17 issued after building materials annexed

Education

- Sales and use tax responsibilities

Department will review leads received.

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Nonresident Individuals Performing Personal Services in Nebraska

➤ **Business Background**

- Any business that gets audited is reviewed to be sure the entity has correctly withheld income tax on payments made to nonresident individuals and certain other entities that were hired to perform personal services in Nebraska.
- A specific information guide has been created.

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Nonresident Individuals Performing Personal Services in Nebraska (continued)

➤ Definitions

- **Nonresident Individual.** A person who is not a resident of Nebraska at the time the personal service is performed
- **Nonresident Entity.** Includes corporations, partnerships, and LLCs not domiciled in Nebraska, and that do not maintain a permanent place of business in Nebraska
- **Personal Services.** Include services provided by persons not considered employees under the IRC

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Nonresident Individuals Performing Personal Services in Nebraska (continued)

➤ Payment Requirements (continued)

- **Payments to Nonresident Individuals.**
Payments are subject to withholding when:
 - The payor maintains an office or transacts business in Nebraska and the payments exceed \$600; or
 - The payor DOES NOT HAVE an office in Nebraska and the payments exceed \$5,000.

More...

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Nonresident Individuals Performing Personal Services in Nebraska (continued)

➤ Payment Requirements (continued)

- **Payments to Nonresident Entities.**
Payments are subject to withholding when:
 - The payor maintains an office or transacts business in Nebraska and the payments exceed \$600; or
 - The payer DOES NOT HAVE an office in Nebraska and the payments exceed \$5,000;
 - AND...

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Nonresident Individuals Performing Personal Services in Nebraska (continued)

➤ Payment Requirements (continued)

- **...AND when:**
 - 80% or more of the **voting stock** is owned by shareholders who perform the personal services; or
 - 80% or more of the **ownership or profits interest** of a partnership or LLC is held by partners or members who perform the personal services.

For these businesses, withholding is required for services performed by any shareholders, partners, or members. It doesn't matter how many are physically in Nebraska.

More...

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Nonresident Individuals Performing Personal Services in Nebraska (continued)

➤ Payment Requirements (continued)

- **Payments to Nonresident Entities.** Payments are considered to be made directly to the individuals actually performing the services in Nebraska.
 - Divided among the shareholders, partners, or members working in Nebraska according to their interest in the corporation, partnership, or LLC.

➤ Net Payment Calculation

- Directly related expenses are deducted before withholding is calculated
- Expenses are limited to no more than 50% of the gross payment.

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Nonresident Individuals Performing Personal Services in Nebraska (continued)

➤ Withholding Calculation

- If net payments are **less than \$28,000**, the withholding rate is 4%.
- If net payments are **\$28,000 or more**, the withholding rate is 6%.

When the total net payments are \$28,000 or more, and some of the withholding was calculated at the lower rate, withholding on future payments must be increased to make **total withholding equal to 6%**.

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Nonresident Individuals Performing Personal Services in Nebraska (continued)

➤ Typical Audit Findings Withholding

- Nebraska businesses that have made payments for personal services to nonresident individuals and other entities frequently do not withhold as required.
- Business entity that issued the Form 1099 is given the opportunity to prove the recipient reported the income to Nebraska and paid the income tax.
 - Recipient has to supply copies of filed returns.

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Nonresident Individuals Performing Personal Services in Nebraska (continued)

➤ Typical Audit Findings Withholding (continued)

- If no proof is provided, the tax is assessed against the business who issued the Form 1099.
- In every case, interest and penalty will be due from the point that the withholding should have been reported until it is (was) paid.

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Income Tax

- ✓ Form 4797N
- ✓ Underreported Income
- ✓ Residency Status
- ✓ Apportionment

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Income Tax - Form 4797N

Special Capital Gains/Extraordinary Dividend Election and Computation

➤ Typical Audit Findings

- The capital gains do not qualify for the **exclusion** because:
 - 1) The **STOCK** does not qualify;
 - 2) The **CORPORATION** does not qualify; or
 - 3) The **TAXPAYER** is not a Nebraska resident.

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Income Tax - Form 4797N (continued)

➤ THE STOCK

- Must be capital stock of a corporation that was acquired by the individual:
 - on account of employment by the issuing corporation; or
 - while employed by this corporation.
- Does not qualify if it was:
 - created or purchased by a nonemployee;
 - acquired for services performed by a nonemployee; or
 - inherited or transferred through a testamentary trust.

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Income Tax - Form 4797N (continued)

➤ THE CORPORATION

- A qualified corporation is any corporation, which at the time of the first sale or exchange of capital stock for which the election is made:
 - has been in existence and actively doing business in Nebraska for **at least 3 years**;
 - has **at least 5 shareholders**; and
 - has **at least 2 shareholders** or groups of shareholders who are **not related** to each other and who each **own at least 10%** of the stock.

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Income Tax - Form 4797N (continued)

➤ **THE CORPORATION** (continued)

- Extraordinary dividend is any dividend that is more than 20% of the fair market value of the related stock on the date the dividend is declared.

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Income Tax - Form 4797N (continued)

➤ **THE TAXPAYER**

- Each resident individual is entitled to **ONE** election during his or her lifetime for the capital stock of **ONE** corporation.
 - The election can cover multiple transactions in the year of election and in subsequent years.
- If the individual dies without making an election, the surviving spouse may make the election.
- If there is no surviving spouse, then the election can be made by the oldest child/grandchild.

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Income Tax - Form 4797N (continued)

➤ **Audit Results**

- ✓ Form 4797N disallowed
- ✓ Assessment issued to reflect the correct tax amount on the individual income tax return

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Income Tax - Underreported Income

➤ **Background**

- The Department reviews Nebraska **individual income tax** returns for taxpayers involved with payments of alimony.

➤ **Typical Audit Findings**

- Income has not been reported by alimony recipients.

➤ **Possible Issues**

- Failure to report any alimony as taxable income.
- Failure to report the correct amount.
 - Taxpayers will claim child support as adjustment.⁵⁶

Income Tax - Underreported Income

(continued)

➤ Audit Results

- ✓ Requests are made for additional supporting court documents to determine the actual amount of income.
- ✓ Assessment issued to reflect the correct amount on an individual income tax return.

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Income Tax – Residency Status

➤ Resident

- ✓ An individual who is domiciled in Nebraska or who maintained a permanent place of abode and resided in Nebraska for 6 months or more during the tax year.

➤ Domicile

- ✓ The place an individual considers his/her permanent home, or the place to which he/she intends to return after a period of absence. A domicile, once established, continues until a new, fixed, and permanent home is acquired. No change in domicile results from moving to a new location if the person's intent is to remain for a limited time, even if it is several years.

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Income Tax – Residency Status (continued)

➤ Nonresident

- ✓ An individual who is domiciled for the entire year in a state other than Nebraska, and did not reside in Nebraska for more than 6 months.

➤ Partial-Year Resident

- ✓ An individual who either begins or ends his/her domicile in Nebraska during the tax year, or who resides in Nebraska for more than 6 months during the year. When ending your domicile in Nebraska, you must show an intent to abandon Nebraska as your home. Usually a person is only a partial-year resident for 1 year, not multiple years.

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Income Tax – Residency Status (continued)

➤ Filing Status

- ✓ Your Nebraska filing status **must** be the same as your federal filing status.
- ✓ The only exception is for married taxpayers where one is a Nebraska resident and the other is a nonresident or partial-year resident of Nebraska.
 - Taxpayers may elect to file jointly as Nebraska residents.
 - Taxpayers may elect to file married, filing separately for Nebraska.
 - If you filed married, filing jointly on the federal return, must recalculate the federal returns as if you filed married, filing separately and use respective income, deductions, and exemptions for Nebraska returns.

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Income Tax - Apportionment

➤ **Typical Audit Findings**

- The apportionment factor used to determine the amount of federal taxable income that is attributable to Nebraska has been calculated incorrectly.

➤ **Possible Issues** (Reg-24-040)

- Error in method chosen to calculate factor:
 - Use of gross receipts sales factor when cost of performance factor is required.
 - Service organizations and franchisors vs. manufacturers and retailers of tangible personal property.
- Changing calculation without filing a request for use of an alternative method (Neb. Rev. Stat. § 77-2734.15).

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Income Tax - Apportionment (continued)

➤ **Possible Issues** (Reg-24-040) (continued)

Nonbusiness Income

- All income presumed subject to apportionment in Nebraska (Neb. Rev. Stat. § 77-2734.06).
- For income claimed not subject to apportionment (nonbusiness income), taxpayer needs to show:
 - Income not part of unitary business; and
 - Taxpayer hasn't apportioned same income in another state.
- Taxpayers claiming nonbusiness income deduction on their tax return, Department will accept affidavit signed by corporate officer that 2 criteria above have been met.

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Income Tax - Apportionment (continued)

➤ **Possible Issues** (Reg-24-040) (continued)

Nonbusiness Income (continued)

- Burden of proof that income not subject to apportionment remains with the taxpayer.
- If audited, nonbusiness income deduction will be examined very closely.

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Income Tax - Apportionment (continued)

➤ **Audit Results**

- ✓ The overall business model is reviewed to determine how the apportionment factor should be developed.
- ✓ Tax, interest, and penalty is assessed on the new results after the corrected factor is applied.

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Income Tax

✓ Questionable Deductions?

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If time allows...

✓ Food and Food Ingredients?

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Let us know what you think.
Please turn in your evaluation!
THANK YOU!

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